IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 55 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

D S VIRAWALA SURAGWALA

Appearance:

1. WEALTH TAX REFERENCE No. 55 of 1990

MR BB NAIK for Petitioner No. 1

MR RK PATEL with MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the Commissioner of Wealth-tax, Rajkot, the following questions are referred for our opinion in respect of

assessment years 1981-82 and 1982-83 :-

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to exemption under section 5(1)(iii) of the Wealth-tax Act, 1957, in respect of new building constructed by him in place of the old recognized palace ?

2. Whether, on the facts and circumstances of the case, the Tribunal was right in law in coming to the conclusion that the exemption was available to a building used as an official residence irrespective of the fact whether it was old or newly constructed ?

2. We have heard Mr BB Naik, learned counsel for the revenue and Mr RK Patel with Mr BD Karia, learned counsel for the respondent-assessee.

3. The order giving rise to the present reference came to be passed by the Tribunal in favour of the assessee consistently with its order for the assessment year 1980-81 which in turn had followed its order in the same assessee's case for the assessment years 1977-78 to 1979-80. By the aforesaid assessment orders, the Appellate Assistant Commissioner as well as the Tribunal had held that when the building notified by the Government was demolished, the building constructed on the same land would be eligible for exemption under Section 5(1)(iii) of the Wealth-tax Act.

In the case of this very assessee reported in (2002) 122 TAXMAN 782 (Guj.), this Court has answered the reference in favour of the assessee and against the revenue.

4. Following the aforesaid decision, we answer both the questions referred for our opinion in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)(K.A. Puj, J.)
sundar/-